

## **REMARKS**

### **I. PENDING CLAIMS AND SUPPORT FOR AMENDMENTS**

A replacement Table 1 having corrected line spacing is submitted herewith.

Claims 1-5 and 7-15 are pending in this application. Claims 1, 13 and 15 have been amended in order to more clearly describe the claimed invention. Specifically, claims 1, 13 and 15 have has been amended to include the limitations of claims 3, 6 and 8, and claims 3, 6, and 8 have been deleted. Claims 1, 13 and 15 have also been amended to include several compounds listed in claim 7, and claim 7 has been amended accordingly. Claims 16 and 17 have been added. Support for these amendments can be found in the specification of the application at page 11, line 30 to page 12, line 3.

No new matter has been added.

### **II. THE CLAIMS ARE PATENTABLE UNDER 35 U.S.C. § 103(a)**

On pages 2-3 of the Office Action, the Examiner rejected claims 1-5, 7-12 and 14-15 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,777,110 to Davis et al. and U.S. Patent No. 6,423,732 to Rustenburg et al. This rejection is respectfully traversed and reconsideration and withdrawal thereof are requested.

As stated above, claims 1, 13 and 15 have been amended to include the limitations of claims 3, 6 and 8 in order to more clearly define the scope of the claimed individual

components. Applicants have also provided a replacement Table 1 with corrected line spacing. As shown in Table 1 and as discussed during the Interview with Examiner Pryor, no effective protection of wood is achieved when Bardap 26, tebuconazole and propiconazole by themselves are tested against soft rot fungi belonging to the groups *Ascomycotina* and *Deuteromycotina*. One of ordinary skill in the art would therefore not have expected that the addition of a quaternary ammonium compound or a triazole to an oxathiazine formulation would improve its efficacy against soft rot fungi. The difference between the  $> 0.77$  toxic limit value reported for bethoxazin and the 0.65 to 0.74 toxic limit value reported for bethoxazin/propiconazole (1:1) is significant in that it is an increase in efficacy, which is not expected. An increase in toxic limit value (and a decrease in efficacy), rather than a decrease in toxic limit value, would actually be expected from a combination of bethoxazin and propiconazole, since propiconazole alone has a toxic limit value of  $> 7.0$ . The skilled person would therefore have had no motivation to add a quaternary ammonium compound or a triazole compound to an oxathiazine formulation.

As a further example of synergism, Table 3 on page 24 of the specification displays the actual and theoretical toxic values for the bethoxazin/propiconazole (1:1) composition together with its synergistic index (SI) value. The synergistic index of this composition is 2.03, which is substantially greater than 1 (a value of 1 corresponds to a purely additive effect with no synergy). See specification, page 20, lines 25-28. Moreover, in the case of the three-way combination, additional synergy is noted. See specification, page 24, Table 3.

The cited references fail to disclose or suggest a wood preservative formulation comprising oxathiazine and a quaternary ammonium compound or oxathiazine and a triazole in synergistic proportions as claimed. The dependent claims are patentable for at least the reasons the independent claims are patentable and may be patentable for additional reasons. For at least these reasons, the Examiner's rejections are traversed and reconsideration and withdrawal thereof are respectfully requested.

**PETITION FOR TWO-MONTH TIME EXTENSION**

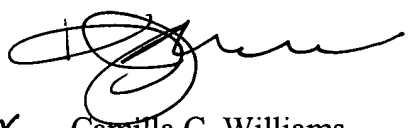
To the extent necessary, under 37 C.F.R. § 1.136(a) (1998) assignee hereby petitions that the period for responding to the Examiner's Action mailed on March 9, 2004 be extended for two months, up to and including August 9, 2003. Enclosed is a check in the amount of \$420.00 to cover the appropriate fee for this extension under 37 C.F.R. § 1.17. Please charge any additional fees or credit any overpayment to Deposit Order Account No. 11-0855.

**CONCLUSION**

For at least the reasons detailed above, the present application is in condition for immediate allowance, and an early notification to that effect is earnestly solicited.

Please charge any additional fees or credit any overpayment to Deposit Order  
Account No. 11-0855.

Respectfully submitted,

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